

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PECONIC BAYKEEPER, INC., KEVIN
MCALLISTER, ALFRED CHIOFOLO,

Plaintiffs,

-against-

ORDER

CV 04-4828 (ADS)(ARL)

SUFFOLK COUNTY, INC.,

Defendants.

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LINDSAY, Magistrate Judge:

Before the court is the defendants' letter application dated January 13, 2006 and the plaintiff's opposition to that application. This is the second motion addressing the same set of documents. The first motion to compel revealed that the parties had failed to consult with one another in good faith. This motion is no different. Parties cannot fail to respond to an adversary's good faith request and then ask the court to absolve them once their adversary is forced to seek court intervention. Rule 37(a)(4) provides that "the court shall . . . require the party whose conduct necessitated the motion or the attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees . . . , unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure . . . or that the party's nondisclosure . . . was substantially justified. . . ." In the future, this court will assess the costs of such a motion.

The plaintiff shall make its relevant files available for inspection and copying at a mutually agreeable time, but no later than February 8, 2006. If the plaintiff does not have documents responsive to the request, the plaintiff shall provide the defendants with a written response indicating that no such documents exist. The plaintiff is reminded, however, that it will be precluded from introducing any responsive documents that it fails to produce.

Dated: Central Islip, New York
January 31, 2006

SO ORDERED:

_____/s/_____
ARLENE R. LINDSAY
United States Magistrate Judge